Supreme Court, U.S.
FILED
JUL 28 1992
OFFICE OF THE CLERK

Nos. 91-1195 & 92-31

In The

SUPREME COURT OF THE UNITED STATES

October Term, 1992

CHINA EVERBRIGHT TRADING COMPANY,
Petitioner,

vs.

TIMBER FALLING CONSULTANTS, INC.,
Respondent.

ON PETITIONS FOR WRITS OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

PETITIONER'S REPLY IN SUPPORT OF MOTION FOR CONSIDERATION IN TANDEM

Petitioner China Everbright Trading Company ("Everbright")[1] has filed with this Court two Petitions for Writs of Certiorari in Case Nos. 91-1195 and 92-31, both arising ultimately out of the same action in the United States District Court for the District of Oregon, seeking review of orders of two panels of the United States Court of Appeals for the Ninth Circuit in separate appeals. Shortly after filing the

1 Respondent Timber Falling Consultants, Inc. ("TFC") suggests that Everbright somehow has violated district court orders with respect to advising TFC of its name change (from the former Beijing Ever Bright Industrial Company). Response to Motion for Consideration In Tandem at 1 n.1. Although the name change is wholly irrelevant to the proceedings pending before the Court, Everbright here notes that it served copies on TFC of all of the following: the April 29, 1992, letter to Francis J. Lorson, Esq., Chief Deputy Clerk, notifying this Court of the name change; the April 29, 1992, letters to the Clerk of Court of the Court of Appeals for the Ninth Circuit advising that court of the name change; and the April 30, 1992, Notice of Formal Name Change filed in Civ. No. 88-1203FR in the District of Oregon.

4 pp

second petition in Case No. 92-31, Everbright moved this Court to have the two petitions considered in tandem. Respondent Timber Falling Consultants, Inc. ("TFC"), however, opposes tandem consideration on the two grounds that the petitions raise separate issues and that it will be prejudiced if consideration of the first petition is delayed to facilitate tandem consideration. Response To Motion For Consideration In Tandem at 2.

It certainly is true that the two petitions present separate questions; Everbright noted that in its motion, and explained that each petition independently is worthy of the Court's review.[2] TFC's response, however, neither denies nor challenges the facts that the two petitions involve the same parties and background facts, arise out of the same proceeding, and will, if considered in tandem, allow the Court to examine each important question presented in the full context of the proceedings below and provide for the most efficient and effective presentation of the issues.

As for the delay and alleged prejudice that TFC claims, consideration of both petitions in tandem cannot, as a practical matter, delay consideration of the first petition: the Court currently is awaiting the response of the Solicitor General to its March 9, 1992, request for the views of the United States on the petition in Case No. 91-1195. Presumably those views will be presented yet this summer, and the Court

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[2] Everbright chooses not to be drawn into a reply on TFC's comments on the merits of the two pending petitions except to note that, contrary to TFC's representation, the issues in the first petition in fact were repeatedly and timely raised, and actually ruled upon, as noted in Everbright's reply brief in Case No. 91-1195. See Petitioner's Reply to Respondent's Brief in Opposition at 4-5.

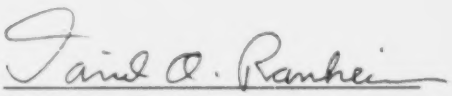
will not, in any event, consider the first petition until those views are received. If the views of the United States are received this summer, both cases will be ready for the Court's consideration at its September Conference. Thus, there will be no delay in consideration of the first petition -- and therefore no prejudice to TFC -- by setting the first petition for consideration in tandem with the second.

CONCLUSION

Petitioner China Everbright Trading Company respectfully requests this Court to grant its motion and set Everbright's two petitions on its docket for consideration in tandem.

Dated: July 27, 1992

Respectfully submitted,



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AFFIDAVIT OF SERVICE BY U.S. MAIL

(SUP. CT. RULE 29.5(c))

STATE OF MINNESOTA }
} SS
COUNTY OF HENNEPIN }

C. Ann Olson, being first duly sworn on oath, deposes and states as follows:

1. That on the 28th day of July, 1992, she did send by United States mail, pursuant to Supreme Court Rules 29.3 and 29.4(b), a mailing container properly sealed and with first class postage prepaid to:

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Attorney for Respondent Timber Falling Consultants, Inc.

and

The Honorable Kenneth W. Starr
Solicitor General of The United States
Department of Justice
Washington, DC 20530

one copy of Petitioner's Reply in Support of Motion for Consideration in Tandem.

2. All parties required to be served have been served.

Subscribed and sworn to before me
this 28th day of July, 1992.

Notary Public

JENNIE M. SMITH
NOTARY PUBLIC – MINNESOTA
HENNEPIN COUNTY
My Commission